THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.27189 OF 2005

Dated: 27th March, 2006.

Between :

Singareni Steels Pvt. Ltd., reg. Office at No.104,
Bhavanam Estate, Somajiguda, Hyderabad, rep.
by its Director V. Sitapati Rao, S/o. Raghavendar Rao,
aged 55 years, R/o. 1st Floor, Venkat Enclave,
Tikkle Road, Vijayawada. … Petitioner

And

1. The Managing Director, A.P. State Financial Corporation, Chirag Ali Lane, Hyderabad, and 3 others. … Respondents

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WRIT PETITION NO.27189 OF 2005

ORDER :

The petitioner Company is a Small Scale Industry engaged in manufacturing of Steel Ingots. It is stated that the petitioner company became sick and consequently the management was compelled to close down the unit in the year 1998. Subsequently, it obtained a loan of Rs.80 lakhs from the A.P. State Financial Corporation and took up the installation of Captive Power Plant. However, it suffered losses and the unit remained closed for a period of six years. While so, the Government of A.P. issued G.O.Ms.No.359, Industries & Commerce Department, dated 25-6-2001 formulating a Scheme for revival of Small Scale Sick Units. It is claimed that the petitioner got itself registered under the said Scheme and a meeting was held on 24-1-2004 as a part of the said Scheme for revival of sick units. In the said meeting, the 4th respondent – A.P. State Financial Corporation (APSFC) agreed to extend certain benefits to the petitioner company. It is alleged that thereafter no further steps were taken by the 1st respondent – Managing Director, APSFC, in terms of the decision of the A.P. Small Scale Industries Revival Scheme Committee. Hence, the petitioner made a representation to the 2nd respondent – Commissioner of Industries and in pursuance thereof the 2nd respondent addressed a letter dated 12-5-2004 to the 1st respondent requesting to take the necessary action as per the decision of the Committee. But, the 1st respondent failed to take any steps for settlement of the issue with the petitioner company by working out a package for One Time Settlement (OTS) as agreed under the Revival Scheme envisaged by the Government vide G.O.Ms.No.359, dated 25-6-2001. Instead, the 4th respondent issued a notice dated 30-11-2005 under Section 29 of the State Financial Corporations Act, 1951 proposing to sell the petitioner' unit as well as collateral properties in order to realise the entire amounts due to the Corporation. Aggrieved by the said action of the Corporation, this writ petition is filed seeking a Mandamus directing the 1st respondent Corporation to implement the decision taken by the A.P. Small Scale Industries Revival Scheme Committee as communicated by the 2nd respondent vide letter dated 12-5-2004 and to declare the action of the 4th respondent in invoking Section 29 of the State Financial Corporations Act, 1951 and issuing Recall-cum-Sale Notice, dated 30-11-2005 for sale of factory, land, building, and plant & machinery of the petitioner company as arbitrary and illegal.

In the counter-affidavit filed on behalf of the A.P. State Financial Corporation, it is stated that the petitioner, having availed term loan of Rs.89.95 lakhs on 26-5-1998, committed default in repayment. In the circumstances, the Corporation initiated the action under Section 29 of the State Financial Corporations Act both against the primary as well as the collateral security and issued Sale Notice for sale of collateral security. While so, the surety filed O.S.No.3076 of 2004 on the file of the Court of I-Additional Senior Civil Judge, Hyderabad and obtained interim orders restraining the sale of the collateral security. It is further stated that pursuant to G.O.Ms.No.359, dated 25-6-2001 a meeting was convened on 24-1-2004 in which it was resolved that the respondent Corporation will work out a package within 15 days on the OTS Proposal. The respondent Corporation agreed for the closure of the loan account subject to the petitioner depositing a sum of Rs.27 lakhs representing 15% down payment. However, the petitioner failed to respond and did not remit any amount in spite of several reminders. The said fact was informed to the Government by the Corporation vide letter dated 25-2-2005. The petitioner by letter dated 15-12-2004 expressed its inability to pay the amount and sought for re-schedulement of the loan. Having regard to the attitude of the petitioner, the Corporation by letter dated 25-2-2005 informed the Government that the Corporation is left with no other alternative, but to initiate the action for recovery of dues. It is stated that Rs.1,07,12,187/- is due and payable to the Corporation by 31-1-2006. All other allegations made by the petitioner have been denied and it is stated that the petitioner, who is a defaulter, is not entitled to any relief.

I have heard the learned Counsel for both the parties and perused the material on record.

The minutes of the meeting of A.P. Small Scale Industries Revival Scheme for revival of sick units held on 24-1-2004 shows that the petitioner company was also one of the sick units registered under the said Scheme and as per the discussions held with the representatives of the A.P. Transco, Sales Tax Department and the A.P. State Financial Corporation with regard to the existing liabilities of the petitioner company, so far as the Corporation is concerned, it was decided as under :

"The APSFC will work out a package within 15 days on the OTS

Proposal"

Whereas the petitioner alleges that the respondent Corporation failed to work out package on the OTS proposal as agreed, but on the other hand, initiated sale proceedings invoking Section 29 of the State Financial Corporations Act, 1951, the specific case of the respondent Corporation is that the petitioner was already informed that the loan account of the petitioner unit does not fit into the OTS guidelines of the Corporation. The material placed before this Court by the Corporation shows that by letter dated 5-6-2004 while informing the petitioner that its loan account does not fit into the OTS guidelines, the respondent Corporation further stated that it has been decided to dispose of the collateral security properties under Section 29 of the Act. Having received the said letter, the petitioner addressed a letter dated 9-6-2004 to the respondent Corporation explaining that if the guarantor's property is liquidated, the petitioner will not be in a position to run the unit, and requesting the Corporation to take up the matter as a special case for approval of OTS at the apex level and in case the Corporation is not convinced, as an alternative measure the loan may be rescheduled as a Long Term Loan for a period of five years, thereby extending all the reasonable concessions applicable for rehabilitation of the petitioner unit including moratorium period for one year. In response to the said letter, the respondent Corporation by letter dated 30-06-2004 informed the petitioner that it is not possible either to consider the OTS or to reschedule the amounts outstanding in the loan account as requested by the petitioner and therefore calling upon the petitioner to clear the total amounts outstanding as on that date with further interest till the date of closure within ten (10) days failing which they shall proceed further with finalisation of the sale of property offered as collateral security. In the said letter, the loan outstanding as on 31-5-2004 was shown as Rs.93,65,224/-. The said letter was sent to the petitioner by registered post. In pursuance thereof, it appears a meeting was held between the petitioner company and the 1st respondent Corporation in which the petitioner was advised to clear at least Rs.27 lakhs towards interest to enable the Corporation to examine their request for allowing further time to clear the balance. But the petitioner failed to comply with the same, and against sought re-schedulement of the amount. The said request of the petitioner was rejected by the respondent Corporation by letter dated 11-10-2004 sent by registered post and calling upon the petitioner to pay a sum of

Rs.27 lakhs immediately so as to consider their request to grant further time. Since the petitioner failed to respond, ultimately the respondent Corporation, after sending several reminders, issued the Sale Notice dated 30-11-2005 for sale of the assets of the petitioner unit under Section 29 of the State Financial Corporations Act, 1951 for recovery of the outstanding amounts under the loan account.

From the above referred correspondence, it is clear that the petitioner was informed that it is not possible to work out a package with regard to One Time Settlement proposal as decided in the meeting dated 24-1-2004 held by the Committee under the A.P. Small Scale Industries Revival Scheme formulated under G.O.Ms.No.359, dated 25-6-2001. The letter of the petitioner dated 9-6-2004 shows that the petitioner was very well aware of the fact that their case does not fit into the OTS Norms of the Corporation because the value of the collateral security was above certain level. Hence, the plea of the petitioner that the 1st respondent Corporation failed to implement the decision taken by the Revival Committee under the A.P. Small Scale Industries is absolutely incorrect and without any basis.

That apart, admittedly the scheme known as “A.P. Small Scale Industries Revival Scheme” formulated under G.O.Ms.No.359, dated 25-6-2001 has no statutory force. Hence, the mere fact that the respondent Corporation having participated in the deliberations, agreed to work out a package on the OTS proposal cannot be said to have conferred any legal right on the petitioner to seek enforcement of the same by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Having regard to the facts and circumstances of the case, I do not find any justifiable reason to hold that the respondent Corporation is bound to come out with One Time Settlement and therefore it cannot be said that there is any failure or inaction on the part of the respondent Corporation.

Though the learned Counsel for the petitioner sought to rely upon Section 39

of the State Financial Corporations Act, 1951 and contended that the State Government is competent to give instructions to the Corporation on questions of policy and the Corporation is bound to follow such instructions, I am unable to agree. Section 39 of the State Financial Corporations Act, 1951 puts the State Government in control of the functions of the Board of the Corporation and empowers to issue guidelines and directives on certain policy matters. The said power does not include, as contended by the learned Counsel for the petitioner, to direct the Corporation to extend the facility of One Time Settlement to one of the defaulters.

For the aforesaid reasons, no Mandamus can be issued compelling the 1st respondent Corporation to work out One Time Settlement as per the decision of the Committee under A.P. Small Scale Industries Revival Scheme. Consequently, the action of the respondent Corporation in initiating sale proceedings under Section 29 of the Act cannot be said to be erroneous or contrary to law.

The Writ Petition is devoid of merit and the same is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 27–03-2006

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